

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**DONELL THOMPSON, JR.,** )  
Plaintiff, )  
v. )  
**TERRI TURLEY,** )  
Defendant. )  
Case No. CIV-24-719-SLP

## **REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. United States District Judge Scott L. Palk has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

In accordance with that referral, the undersigned entered an Order requiring that the Plaintiff either pay the \$405.00 filing fee or submit a motion for leave to proceed *in forma pauperis* no later than August 5, 2024. The Court advised the Plaintiff that his failure to comply with this Order may result in the dismissal of this action without prejudice to re-filing. As directed in the Order the Clerk of Court forwarded to the Plaintiff the necessary forms to make application to proceed *in forma pauperis*. See ECF No. 5 and Staff Note dated 7/19/2024.

On August 2, 2024, in response to the Court's Order, the Plaintiff submitted an Affidavit (ECF No. 6) titled "AFFIDAVI OF EXEMPTION FROM FEES." This filing informs the Court that Mr. Thompson believes he has "free access to the Courts" and "the fee is

the statutory creature moving in fiction falsity." Following review of this filing the Court finds that Mr. Thompson has failed to cure the deficiencies, show good cause for his failure to do so, or request an extension of time to comply with the Court's order. In fact, Plaintiff has done just the opposite, Mr. Thompson informs the Court he is not required to pay a filing fee and further certifies that his Affidavit is "true, correct, complete and certain, and not misleading." This response completely fails to comply with the Court's Order. Further, there is no indication from the docket that Plaintiff did not receive the Court's previous Order which was mailed to Plaintiff's address of record. *See Id*; LCvR 5.4.(a).

The undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

#### **RECOMMENDATION**

Based on the foregoing findings, it is recommended that this action be **DISMISSED without prejudice** for Plaintiff's failure to comply with this Court's orders. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **August 26, 2024** in accordance with 28 U.S.C. § 636 and

Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation terminates the referral to the undersigned magistrate judge in the captioned matter.

ENTERED on August 9, 2024.



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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE